

## **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

**The Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97)** is a federal special education law that requires school districts, charter schools, and other public educational agencies (hereafter referred to as the "School") to provide a free appropriate public education (FAPE) to eligible children with disabilities. This free appropriate public education refers to special education and related services, described in an Individualized Education Program (IEP) and provided to the child in the least restrictive environment (LRE).

**Children with disabilities and their parents** are guaranteed certain educational rights, known as procedural safeguards, from ages birth through 21. This booklet will help you make appropriate educational decisions on behalf of your child. IDEA '97 and its implementing regulations also provide methods to help you assure that your input is considered.

**If your child is not currently receiving special education services**, you have been given this information either because you asked that your child receive special education services or because we believe that special education services may be necessary for your child to receive a free appropriate public education (FAPE). We are required to evaluate your child to identify and document whether your child has any disabilities that affect his or her learning and, if so, to determine what special education and related services are required. The evaluation will only be done after we have explained what we plan to do during the evaluation. We will use tests and procedures selected specifically for your child. The evaluation will not include basic tests or procedures used routinely for all students within a class, grade, or school. This evaluation will be conducted according to federal and state requirements and will include information provided by you. Following the evaluation, we will provide you with the complete results within 60 calendar days of your written consent. If your child is found to be eligible for special education services, we will ask you to help us develop an Individualized Education Program (IEP) and identify the special education and related services and any other support services needed by your child. You may ask others to be present at the IEP meeting, if you wish.

**If your child is already receiving special education services**, this information is being provided because we are: (1) arranging to review your child's IEP, (2) planning a re-evaluation of your child, or (3) you have requested an impartial due process hearing.

### **FOR MORE INFORMATION**

#### ***Where can I get more help to understand these rights?***

You should speak with your child's teacher or school principal, the director of special education or the superintendent of the School where your child receives educational services, if you do not understand any of these rights or procedures. Other parent support groups, such as the Parent Information Network Specialists (PINS), sponsored by the Arizona Department of Education, can also be contacted, at the number listed below, to help you to better understand the procedures. You can also contact the Arizona Center for Disability Law at the numbers listed below.

Parent Information Network Specialists (PINS)

In Phoenix: (602) 542-3852

Outside Phoenix Area: (800) 352-4558

Arizona Center for Disability Law

In Tucson: (800) 922-1447

In Phoenix: (800) 927-2260

Additionally, the Exceptional Student Services Division of the Arizona Department of Education (ADE/ESS) is also available to assist you. The phone number in Tucson is (520) 628-6330; and in Phoenix (602) 364-4000.

## **WRITTEN NOTICES**

### ***What types of notice can I expect to receive?***

There are three types of notice that you should expect to receive: Procedural Safeguards Notice, Prior Written Notice, and Meeting Notice.

### ***What is the Procedural Safeguards Notice?***

The information contained in this booklet will serve as the Procedural Safeguards Notice. It has a full explanation of your rights and those of your child along with procedures that will be used by us to ensure that your rights and those of your child are protected throughout the special education process.

### ***When should I receive the Procedural Safeguards Notice?***

A Procedural Safeguards Notice must be provided to you, at a minimum, at the following times:

1. At the initial referral for evaluation;
2. At each notification of an IEP meeting;
3. Every time your child is reevaluated; and
4. When you or the School requests due process.

### ***What is the Prior Written Notice?***

The notice will explain what we propose or refuse to do and how we reached this decision, including a description of each test, record, or report that we used in reaching that decision. We will also describe the alternatives we considered and why we chose the action that we wish to take as well as any other factors that were relevant to our decision. In addition, the prior written notice must include a statement that parents of a child with a disability have protection under the procedural safeguards and if this notice is not for the initial referral for evaluation, you will also be told where you can obtain another copy of the procedural safeguards notice and sources you can contact to get help in understanding your rights.

### ***When should I receive Prior Written Notice?***

Prior written notice must be provided to you whenever we propose or refuse to initiate or change the identification, evaluation, or educational placement, or for the provision of a free appropriate public education (FAPE) to your child. This means that you will be given Prior Written Notice whenever we want to begin, change, or discontinue special education and related services to your child, or to change the conditions under which these services are being provided.

### ***What can I do if I do not understand the Prior Written Notice?***

The notice must be written in language that is understandable to the general public. If you have trouble understanding this or any other document, please ask us to explain any terms or procedures that you do not understand. You may also call the ADE/ESS or advocacy and support groups. We encourage you to ask questions until you fully understand. We will arrange for an interpreter for parents who speak another language. If a parent is deaf or blind or has no written language, we will arrange for communication of this notice in the mode normally used by the parent (such as in sign language, Braille, or through oral communication).

### ***What can I do if I disagree with the action indicated in the Prior Written Notice?***

If you disagree with a proposed or refused action after receiving a Prior Written Notice, you should call your child's principal, the director of special education, or the individual in charge of the educational program to discuss the proposed

or refused action. If we cannot agree on the action, you have the right to resolution by requesting mediation or an impartial due process hearing. Mediation and impartial due process hearings are discussed, in more detail, later in this document.

***What is the Meeting Notice?***

A Meeting Notice must be provided when any group meets concerning the identification, evaluation, educational placement of your child, or the provision of a Free Appropriate Public Education (FAPE) of your child. You will be invited to all these meetings.

***What will the Meeting Notice tell me?***

The Meeting Notice will tell you the purpose, time and location of the meeting, and who will be invited to attend.

***What will happen if you can not attend a meeting?***

If you can not attend the meeting, we may use other methods to ensure your participation, including individual or conference telephone calls, or video conferencing.

Decisions may be made without you if we are unable to obtain your participation. In this case, we must have a record of our attempts to ensure your participation.

**PARENT CONSENT**

***When is my written consent required?***

Your informed consent is required in five instances:

1. Before we can begin evaluating your child for the first time to determine if your child requires special education and related services;
2. Before we gather new information during a reevaluation of your child;
3. Before your child is placed for the first time in a special education program;
4. Before we release any personally identifiable information about your child to any person not otherwise entitled by law to see it; and
5. Before we access your private insurance with regard to services required to provide FAPE.

Your agreement in any of these instances must be voluntary and may be revoked at any time. If you do not consent, and we believe that we are required to undertake them to provide your child FAPE, we must follow certain procedures. We may ask you to enter into mediation, or we may initiate an impartial due process hearing to override your refusal, except as it pertains to instance Number Five above. Under instance Number Five, we must inform you that your refusal to permit us to access your private insurance does not relieve us of our responsibility to ensure that FAPE is provided to your child.

***When is my written consent not required?***

We can conduct a re-evaluation without your consent if we can show that we took reasonable measures to obtain your consent and you did not respond. We may also release your child's educational records without your consent under specific exceptions allowed under the law.

## **PARENT PARTICIPATION**

### ***Do I have the right to participate in meetings about my child?***

You, as the parents or guardians of a child with a disability, have the right and the responsibility to be involved in all meetings regarding the process of identification, evaluation, placement, and the provision of FAPE for your child. Covered meetings do not include informal or unscheduled conversations involving School personnel on issues such as teaching methodology, lesson plans, or coordination of service provision unless those issues are addressed in your child's IEP. Covered meetings also do not include preparatory activities that we engage in that will be discussed at a later meeting.

## **SURROGATE PARENTS**

### ***When is a surrogate parent needed?***

There are times in the lives of some children with disabilities when a surrogate parent is needed to represent the child's special education interests. For example, we must ask the court to appoint a surrogate parent when: (1) no parent can be identified, (2) we cannot, after reasonable efforts, locate the parents, or (3) the child is a ward of the State. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. The surrogate parent: (a) shall be determined by the court to possess knowledge and skills that will ensure adequate representation of the child, (b) may not be an employee of a state agency if that agency is involved in the education or care of the child, and (c) may not have any interests that would conflict with the best interests of the child.

## **TRANSFER OF RIGHTS**

### ***When do parental rights transfer to a child with a disability?***

When your child reaches age 18, we must provide any required notices to both you and your child. You retain the right to participate in meetings for which you receive notice. All other rights transfer to your child (except for a child with a disability who has been determined to be incompetent under State law or if you have retained court-appointed legal guardianship). We must inform you and your child of the rights that will transfer at least one year before your child reaches age 18. We must also inform you and your child in writing when the rights transfer. All rights accorded to parents under IDEA '97 transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution.

## **ACCESS TO EDUCATIONAL RECORDS**

### ***How can I examine my child's education records?***

We have established procedures both to provide you with access to your child's education records and to protect any personally identifiable information in those records. If any education record includes information on a child in addition to yours, you may examine only the information relating to your child. If you request, we will give you a list of the types and locations of education records used by the School. We will also tell you who, if anyone, other than you and the authorized School personnel, has examined your child's records, the date access was given, and the purpose for which the person was authorized to review the records. We must allow you to inspect and review any education records relating to your child with respect to identification, evaluation, and educational placement, and the provision of FAPE to your child. These records include any that are collected, maintained, or used by us to make decisions about your child's education. It should be noted that when these records are no longer required to be maintained by the School, we would inform you before destroying them.

We will comply with your request to inspect or review your child's records without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement, or the provision of FAPE to the child. In no case may we delay more than 45 calendar days after your request has been made. This right of inspection includes an explanation and interpretation of these records to you by the School personnel. You may also have your child's records inspected and reviewed by a representative of your choice. You may request copies of the records. We may charge a fee for copies if the fee does not effectively prevent you from exercising your right to inspect and review those records. We will presume that you have the authority to inspect and review records relating to your child unless we have been advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

### ***How can I correct information in the records?***

If, after reviewing your child's education records, you believe that they contain information that is inaccurate, misleading, or that you believe violates your child's privacy or other rights, you may ask us to change that information. We will either make those changes or reject your request for change within a reasonable period of time. If we reject your request, we will inform you of our rejection and provide information on your right to a hearing. The hearing can be held by any School official or other individual who does not have a direct interest in the outcome.

Once the hearing is completed, the following procedures will be used:

1. If your objection is found to be justified, we will amend the information accordingly and inform you in writing.
2. If your objection is found not to be justified, you have the right to place a statement in your child's education records commenting on the information or giving the reasons for your disagreement with the decision. We will maintain your explanation as part of your child's records as long as we retain your child's records or any contested portion, and will forward your comments along with other records should your child move to another school.

### ***Will I be told when you disclose my child's records?***

We must obtain your consent before allowing information to be used for a purpose other than for that which it was collected or before disclosing personally identifiable information about your child to anyone not entitled to see it under state or federal law. You can review the names and positions of School personnel entitled to see personally identifiable information about your child at the location where the files are maintained. We are responsible for insuring the confidentiality of personally identifiable information about all students, as well as for providing information to you about your rights under the Family Education Rights and Privacy Act (FERPA) and its implementing regulations. This federal law is the primary statute protecting your privacy and that of your child. We may release your child's educational records without your consent under specific exceptions allowed under the law.

## **INDEPENDENT EDUCATIONAL EVALUATION**

### ***Can my child be tested at the expense of the School?***

You have the right to an independent evaluation at public expense if you disagree with the evaluation performed or obtained by the School. This evaluation is called an Independent Educational Evaluation (IEE) and should be carried out by qualified persons who are not employed by the School. If you request information on how to obtain an IEE, we shall provide you with information about where an evaluation may be obtained. We will also supply you with information regarding the criteria applicable to an IEE.

We may ask you why you object to the evaluation performed or obtained by the School. However, we may not unreasonably delay providing the information on how to obtain an IEE because of the request by us regarding the reasons for your objection.

***Must the School always pay for an Independent Educational Evaluation that I request?***

If you request an IEE, we may initiate an Impartial Due Process Hearing to show that its evaluation is appropriate. If the final decision of the Impartial Due Process Hearing Officer is that our evaluation is appropriate, you still have the right to an IEE, but not at public expense.

***Must the results of the Independent Educational Evaluation be considered by the School in making decisions about my child?***

We must consider the results from an IEE regardless of whether the evaluation has been completed at public or private expense.

***Are there any other times when an Independent Educational Evaluation might be required?***

An Impartial Due Process Hearing Officer may request an IEE as part of a hearing. When this happens, the cost of the evaluation must be at public expense.

**UNILATERAL PLACEMENT OF CHILDREN BY PARENTS IN PRIVATE SCHOOLS**

***Can I place my child in a private school and expect the public school to pay for the placement?***

We do not have to pay for the cost of an education, including special education and related services, of a child with a disability at a private school or facility if we make FAPE available to your child, and you elect to place your child in a private school or facility. However, we may be required to reimburse you for the cost of that placement under certain circumstances. You must notify us if you decide to remove your child from the School and place your child in a private school. It should be noted that if you unilaterally place your child in a private school, there is no individual entitlement to special education and related services for your child.

***Under what circumstances can I be reimbursed for the cost of enrolling my child in a private school?***

These reimbursement provisions apply only if your child previously received special education and related services under the authority of a public agency, and you enrolled your child in a private elementary or secondary school or facility without our consent or referral. Under these circumstances, reimbursement can be ordered if a court or hearing officer finds that we did not make a free appropriate public education available to your child in a timely manner before you enrolled your child in the private school or facility.

***Why would I be denied the cost of reimbursement?***

A court or an Impartial Due Process Hearing Officer may reduce or deny the cost of the reimbursement if you have not complied with the requirement to inform us of your intention to place your child in a private school. This requirement can be fulfilled in one of two ways. First, at the most recent Individualized Education Program (IEP) meeting you attended prior to removing your child to a private school, you can inform the IEP team that you reject the placement proposed by us, state your concern, and state your intention to enroll your child in a private school at public expense. Or, you can give written notice of this information to us at least 10 business days (including holidays that occur on a business day) prior to removing your child from the public school. Reimbursement may not be reduced or denied for failure to provide this notice if a parent is illiterate or cannot write in English, if reducing or denying reimbursement would likely result in physical or serious emotional harm to your child, if we prevented you from providing such notice, or if you were not informed that you must provide this notice to us.

Reimbursement may also be reduced or denied if we provided written notice of our intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable) prior to the child's removal

from the public school, and you did not make your child available for such an evaluation. Reimbursement may also be reduced or denied if a court finds that actions taken by you were unreasonable.

***Can I file a State complaint if I feel the district of residence (the district in which the legal guardian of the child resides) is not complying with federal special education requirements under the IDEA?***

Yes, if you feel the district of residence your child would attend if not enrolled in a private school has failed to meet the federal requirements pertaining to private school placement, you may file a complaint using the procedures described in the next section of this document.

***Can I request a due process hearing if I feel the school district in which my child's private school is located is not complying with federal special education requirements under the IDEA?***

Your right to a due process hearing is limited if you place your child in a private school without the consent of your local school district. Due process may only be filed regarding the district's failure to locate, identify, and evaluate private school students.

## **HOW DISPUTES ARE RESOLVED**

### **MEDIATION**

***What is mediation?***

Mediation is a voluntary process that brings together the parties to a dispute with a third party in an attempt to resolve the disagreement through a structured, yet informal meeting. This third party is called a mediator. This is a person who is qualified, impartial, and trained in effective mediation techniques. The state has developed a Mediation System to assist families and Schools in resolving disagreements regarding special education. The costs associated with this process are paid by the state. Mediation must be available whenever an Impartial Due Process Hearing is requested, but may not be used to delay or deny your right to an Impartial Due Process Hearing. Mediation can not be used to extend the 45 calendar day timeline set for Impartial Due Process Hearings, unless both parties request the Impartial Due Process Hearing Officer to postpone the Impartial Due Process Hearing, pending mediation efforts.

***What kinds of disagreements can be handled through mediation?***

Any dispute relating to the identification, evaluation, educational placement, or the provision of a Free Appropriate Public Education (FAPE) to your child may be discussed and, if possible, resolved through mediation.

***How does mediation work?***

Either party can request mediation. If both parties agree, the state should be contacted and a request made for assignment of a mediator. The mediator will arrange for the parties to meet in sessions that are scheduled at times and in places convenient to the parties. Any decisions reached through mediation will be put into a written agreement. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent Impartial Due Process Hearings or in court proceedings. The parties may be required to sign a confidentiality pledge prior to beginning the mediation process.

***Who will serve as a mediator?***

The mediator will be randomly selected from a list of individuals who are qualified mediators and who are knowledgeable about the laws and regulations relating to the provision of special education and related services. The person who serves as the mediator will be free of any interest that conflicts with the interests of any party to the mediation.

### ***Can I be required to use mediation?***

Since this is a voluntary process, you can not be required to participate in mediation. However, if you choose not to participate, the law permits us to establish procedures to require you to meet with a disinterested party from one of the parent information centers, or other appropriate alternative dispute resolution groups or persons. This meeting is designed to encourage the use, and explain the benefits, of the process to you and must be free and at a time and location that is convenient to you.

### ***How can I obtain information about mediation?***

You can contact us or the Dispute Resolution Coordinator at the Exceptional Student Services Division of the Arizona Department of Education for information on the process or to request mediation.

## **STATE COMPLAINT PROCESS**

### ***What is the State Complaint Process?***

You have the right to file a complaint with the Exceptional Student Services Division of the Arizona Department of Education when you believe that we are not complying with federal or state special education laws and regulations. This complaint can deal with any aspect of the process relative to the identification, evaluation, placement, or the provision of FAPE.

### ***What do I need to do to file a complaint with the State?***

Your complaint must be in writing and signed. Your complaint should include the facts related to the alleged violation(s) and should be filed within one calendar year of the alleged violation(s). However, a longer period will be considered reasonable if the violation is continuing, or because you are requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received. Your complaint should be sent to the Dispute Resolution Coordinator at the Arizona Department of Education, Exceptional Student Services, 1535 West Jefferson, Phoenix, Arizona 85007.

### ***What can I expect to happen when I file a complaint with the State?***

When your complaint is received by the Dispute Resolution Coordinator, it is reviewed and an investigator is assigned. You will be notified and a copy of your complaint will be forwarded to us. You will be contacted to ensure that the investigator understands your concerns and to discuss any additional information that you believe may be relevant. Additionally, we will be contacted to discuss the procedures that will be used and to gather preliminary information that may be needed. A decision is then made as to whether the investigator will do an on-site visit or request that we submit information in writing. The investigator will complete his or her investigation and give you his or her decision within 60 calendar days. The decision will include findings of fact and establish a corrective action plan, if one is required. An extension of this timeline will only be made if there are extraordinary circumstances. If this occurs, all parties will be notified in writing.

### ***What will happen if I request a due process hearing while a complaint is being investigated?***

If a written complaint is received that is also the subject of a due process hearing, or contains several issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. The State complaint process must resolve any issue in the complaint that is not a part of the due process action.



## **DUE PROCESS SYSTEM**

### ***What is an Impartial Due Process Hearing?***

An Impartial Due Process Hearing is the process that is used to resolve disputes between parents and Schools. In this process an impartial and trained third person agrees to hear both sides of the dispute and make a decision based upon State laws and regulations, the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97) and its implementing regulations, or under similar cases that have been settled in court. An Impartial Due Process Hearing will be conducted in accordance with the requirements of applicable federal and state laws and regulations. The decision of the Impartial Due Process Hearing Officer can be appealed by you or the School for Administrative Review at the state level. Thereafter, both parties also have the right to file suit in state or federal court to contest any review decision.

### ***What disputes can be brought to an Impartial Due Process Hearing?***

You can bring disputes involving your child's identification, evaluation, placement, or the provision of a free appropriate public education (FAPE) for your child.

### ***How do I request an Impartial Due Process Hearing?***

If you decide that you want an Impartial Due Process Hearing, the request must be in writing to the chief administrator of the School. You must provide your child's name and address, and the name of the school or program your child is attending. You must describe the nature of the dispute and the facts relating to the problem. Further, you must propose a resolution to the problem to the extent possible at the time. You may obtain a copy of a sample form that you may use to request the hearing from us or from the Exceptional Student Services Division of the Arizona Department of Education. We will provide you with information on how to obtain free or low-cost legal services, or other relevant services, if an Impartial Due Process Hearing is initiated by you or by the School.

### ***When is an Impartial Due Process Hearing available?***

An Impartial Due Process Hearing may be requested by you or by the student, if he or she is at least 18 years of age but less than 22 years old. We may also request an Impartial Due Process Hearing. An Impartial Due Process Hearing may be requested because of a disagreement concerning any matter relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to such child. The following are examples of some of the reasons you might seek an Impartial Due Process Hearing:

1. We refuse to identify, evaluate, or appropriately serve your child.
2. We fail to consider results of an Independent Educational Evaluation (IEE).
3. You disagree with a proposed Individualized Education Program (IEP).
4. You object to termination of your child's special education program.
5. You believe our proposed placement will not meet your child's needs as stated in the IEP.
6. You believe the placement is not in the Least Restrictive Environment (LRE) to meet your child's needs.
7. You disagree with our intent to graduate your child.

Examples of some circumstances when we may initiate an Impartial Due Process Hearing are:

1. If you request an Independent Education Evaluation and we believe that our evaluation is appropriate.
2. You refuse consent for an evaluation or re-evaluation and we believe that without this information we may be unable to provide FAPE to your child.

### ***Who will conduct the Impartial Due Process Hearing?***

The Impartial Due Process Hearing is conducted by a person known as an Impartial Due Process Hearing Officer. This person has the responsibility to assure that proper procedures are followed and that rights of the parties are protected. An Impartial Due Process Hearing Officer shall be:

1. Unbiased – not prejudiced for or against any party in the Impartial Due Process Hearing;

2. Disinterested – not having any personal or professional interest that would conflict with his or her objectivity in the Impartial Due Process Hearing;
3. Independent – may not be an officer or employee of the School, the Arizona Department of Education, or any other public agency involved in the education or care of the child. A person who otherwise qualifies to conduct an Impartial Due Process Hearing is not an employee of the agency solely because he or she is paid by the agency to serve as an Impartial Due Process Hearing Officer; and
4. Trained by the Arizona Department of Education as to state and federal laws and regulations relating to the identification, evaluation, placement, and the provision of a free appropriate public education (FAPE) for children with disabilities.

### ***How long will an Impartial Due Process Hearing decision take?***

The Impartial Due Process Hearing must be conducted and a copy of the Impartial Due Process Hearing Officer's decision must be delivered to both parties no later than 45 calendar days after the written request for the hearing was received. However, this timeline may be extended if the Impartial Due Process Hearing Officer grants a specific extension of time following the request of either party. The Impartial Due Process Hearing Officer must reach a decision and deliver a copy of written or, at your option, electronic findings of fact and decisions to each of the parties. The Arizona Department of Education, after removing any personally identifiable information, will transmit the findings and decision to the Special Education Advisory Committee and make them available to the general public. If the School or you do not take any further action, the Impartial Due Process Hearing decision is final.

### ***What procedures will be followed during the Impartial Due Process Hearing?***

The Impartial Due Process Hearing Officer shall preside at the Impartial Due Process Hearing and shall conduct the proceedings in a fair and impartial manner to ensure that all parties involved have an opportunity to:

1. Present their evidence and confront, cross-examine, and compel the attendance of witnesses;
2. Prohibit the introduction at the Impartial Due Process Hearing of any evidence or evaluations completed by that date with recommendations that have not been disclosed to all parties at least five business days before the Impartial Due Process Hearing, if the party intends to use that information in the Impartial Due Process Hearing; and
3. Produce outside expert witnesses, be represented by legal counsel and by individuals with special knowledge or training with respect to problems of children with disabilities.

### ***What are my rights during an Impartial Due Process Hearing?***

The Impartial Due Process Hearing will be conducted at a time and place that is convenient to you and to your child, who may be present if you wish. The Impartial Due Process Hearing Officer will open the hearing to the public at your request; otherwise, the hearing is closed to the public. In cases where there are language differences, an interpreter shall be provided for you. You have all of the rights in the procedures noted above. At the conclusion of the Impartial Due Process Hearing, either party or its representative(s) has the right to obtain a written or, at your option, electronic verbatim record of the hearing.

### ***Can the Impartial Due Process Hearing decision be appealed?***

Both you and the School can appeal the Impartial Due Process Hearing decision to an Administrative Review Officer, who must meet the same impartiality requirements required for local or first level Impartial Due Process Hearing Officers. The request for an appeal must be made through the Arizona Department of Education, Exceptional Student Services within 35 calendar days after receiving the decision of the Impartial Due Process Hearing Officer.

### ***What happens during an Administrative Review?***

The Executive Director of the Office of Administrative Hearings will assign an Administrative Law Judge to serve as the Administrative Review Officer. The Administrative Review Officer will examine the entire first level Impartial Due

Process Hearing record, insure that required procedures were followed, and make an independent decision. The Administrative Review Officer may take additional evidence if he or she believes it is necessary, and may allow the parties an opportunity for additional argument in person or in writing. If the Administrative Review Officer allows additional argument, it will be conducted at a time and place that is convenient to you and your child, who may be present if you wish.

***How long will a review decision take?***

The Administrative Review Officer must reach a decision and deliver a copy of the written or, at your option, electronic findings of fact and decisions to each of the parties within 30 calendar days after receiving the request for appeal. This date may only be delayed if the Administrative Review Officer grants a specific extension of time following the request of either party. If neither party appeals the decision, it is final. After any personally identifiable information is deleted, a copy of the findings and decisions will be transmitted to the Special Education Advisory Committee, and made available to the general public.

***Can I appeal to the state or federal court?***

The Administrative Review Officer's decision is final unless either party files a civil action. You and the School have the right to appeal any Administrative Review decision to the appropriate state or federal court.

***Can I be awarded attorney's fees?***

You may be awarded attorney's fees by the state or federal court if you prevail on a substantial number of the issues in a particular Impartial Due Process Hearing. You can substantially prevail without winning everything that you want from us. You may also be awarded attorney's fees if the court finds that we unnecessarily drew out the final resolution of the action or proceedings or if there was a violation of this section. Fees awarded shall be based on rates prevailing in the community in which the action or proceedings arose for the kind and quality of services furnished, and are not subject to the use of a bonus or multiplier. You can not be awarded attorney's fees for IEP meetings, unless the meeting is ordered as a result of an administrative proceeding or judicial action. You also can not be awarded attorney's fees for a mediation conducted prior to the filing of a request for an Impartial Due Process Hearing. Attorney's fees may be reduced if you unreasonably draw out the final resolution, if your attorney's fees exceed the prevailing hourly rate, if the time spent by the attorney and the legal services furnished were excessive, or if your attorney failed to provide appropriate information to us. Whether you are entitled to attorney's fees can be a difficult determination and must be made by a court, not by the Impartial Due Process Hearing Officers or the Administrative Review Officer.

***Where will my child be placed during the Impartial Due Process Hearing, Administrative Review, or court action?***

In general, unless we both agree otherwise, we can not change your child's placement as it existed on the day you ask for an Impartial Due Process Hearing until the completion of all legal proceedings. However, if an Impartial Due Process Hearing Officer agrees with you that a change of placement is appropriate, that placement must be treated as an agreement between you and the School. If your child is entering public school for the first time, the law requires that, if you agree, we place him or her in the public school program that he or she would otherwise be entitled to attend, until any hearings or court proceedings are concluded, unless we both agree to a different placement. There are some exceptions to this general rule (See the "Discipline Procedures" section).

**DISCIPLINE PROCEDURES**

***Is the School ever permitted to remove my child with a disability from his or her placement?***

We are permitted, under law, to remove your child from his or her current placement under certain circumstances. School personnel can place your child in an appropriate interim alternative educational setting (IAES), another setting, or suspend your child for not more than 10 consecutive school days, if this is the policy we have for all students. Additional

removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct can occur as long as those removals do not constitute a “change in placement.”

A “change in placement” occurs if the removal is for more than 10 consecutive school days; or your child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time your child is removed, and the proximity of the removals to one another.

***Are there any services the School must provide to my child with a disability when he or she is removed from his or her current placement for more than a total of 10 school days in a school year when the removal does not constitute a “change in placement”?***

Beginning on the eleventh cumulative day in a school year that your child with a disability is removed from his or her current placement, we must provide those services that school personnel, in consultation with your child’s special education teacher, determine to be necessary to enable your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in your child’s IEP. School personnel would determine where those services would be provided.

***Is the School required to conduct a functional behavior assessment and develop a behavior plan?***

Either before, or not later than 10 business days after either first removing your child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement, we must take certain actions. If we have not previously conducted a functional behavioral assessment and implemented a behavior intervention plan, we must convene an Individualized Education Program (IEP) meeting to develop an assessment plan to address the behavior. If your child already had a behavioral intervention plan, the IEP team must review the plan and modify it as necessary to address the behavior,

***When may my child with a disability be placed in an Interim Alternative Educational Setting (IAES)?***

We can place your child in an appropriate interim alternative educational setting for up to 45 calendar days if he or she carries a weapon, or is in possession of a weapon, to school or to a school function. We can also make an interim placement for up to 45 calendar days if your child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or at a school function. An Impartial Due Process Hearing Officer can also order your child placed in an appropriate interim alternative educational setting under certain circumstances if we demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to your child or to others. Before making such an interim placement, the Impartial Due Process Hearing Officer must consider the appropriateness of your child’s current placement, and whether we made reasonable efforts to minimize the risk of harm.

***What can I expect when placement in an interim alternative educational setting is ordered?***

Placement in an interim alternative educational setting ordered by us or by an Impartial Due Process Hearing Officer must provide for certain things. First, the interim alternative educational setting must enable your child to continue to progress in the general curriculum and to continue to receive those services and modifications, including those described in your child’s current IEP, that will enable your child to meet the goals set in his or her IEP. The interim alternative educational setting must also include services and modifications designed to address the behavior that resulted in the disciplinary action so that it does not recur.

You can request an Impartial Due Process Hearing to challenge the decisions that led to this interim placement. If you request an Impartial Due Process Hearing, your child will remain in the interim setting, unless we agree otherwise, until the Impartial Due Process Hearing Officer has made a decision or until the time period for the interim placement expires, whichever is sooner. If the interim placement expires, and we then propose to change your child’s placement, you can also request an Impartial Due Process Hearing to challenge the placement we propose. If this occurs, your child will

remain in the placement he or she was in prior to the removal to the interim setting. This is referred to as the current placement under the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97).

If we believe it is dangerous for your child to be in the current placement, we can request an Expedited Due Process Hearing to place your child in an appropriate interim alternative educational setting, or in another appropriate placement ordered by the hearing officer for no longer than 45 days, while the placement dispute is resolved. This procedure may be repeated, as necessary.

***What must the School do if they intend to place my child with a disability in an interim alternative educational setting or initiate a "change of placement" for disciplinary reasons for more than 10 school days?***

We must notify you that this action is going to be taken no later than the date on which the decision is made. The notification of our decision must include this statement of your rights. Then immediately, if possible, but no later than 10 school days after we make a decision to place your child in an interim alternative educational setting or initiate a "change of placement" for disciplinary reasons, we must review the relationship between your child's disability and the behavior that resulted in the disciplinary action. This is known as a manifestation determination review. The review of the relationship between the disability and the behavior must be conducted by the IEP team and other qualified personnel.

***How do we decide if there is a relationship between my child's disability and the behavior that led to disciplinary action?***

The IEP team and other qualified personnel may determine that the behavior of your child was not a manifestation of your child's disability only if the IEP team and other qualified personnel-

- a) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including-
  - 1) Evaluation and diagnostic results, including the results or other relevant information supplied by you;
  - 2) Observations of your child; and
  - 3) Your child's IEP and placement; and
- b) Then determine that-
  - 1) In relationship to the behavior subject to disciplinary action, your child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with your child's IEP and placement;
  - 2) Your child's disability did not impair the ability of your child to understand the impact and consequences of the behavior subject to disciplinary action; and
  - 3) Your child's disability did not impair the ability of your child to control the behavior subject to disciplinary action.

NOTE # 1: If the IEP team and other qualified personnel determine that any of the standards in paragraph (b) above were not met, the behavior must be considered a manifestation of your child's disability.

NOTE # 2: If, in the manifestation determination review, we identify deficiencies in your child's IEP or placement or in their implementation, we must take immediate steps to remedy those deficiencies.

***What happens if my child's behavior is determined not to be a manifestation of his or her disability?***

If your child's behavior is determined not to be a manifestation of his or her disability, disciplinary procedures that are used with children without disabilities can be used. If we initiate disciplinary procedures applicable to all children, we shall ensure that the special education and disciplinary records of your child are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action. If your child is suspended from school for more than 10 school days or expelled from school, we must continue to provide him or her with a Free Appropriate Public Education (FAPE). Educational services must be provided to the extent necessary to enable your child to appropriately progress in the general curriculum and appropriately advance toward the goals as set out in your child's IEP.

***What if I disagree with the outcome of the manifestation determination review or placement decision?***

If you disagree with the determination that your child's behavior is not a manifestation of your child's disability or with any decision regarding placement as a result of disciplinary action, you may request an Impartial Due Process Hearing. This type of hearing would be expedited. An expedited due process hearing shall be conducted and the findings of fact and decision shall be issued within 10 calendar days by an impartial due process hearing officer. In addition, you and the School may try mediation to resolve your disagreements.

***Can my child with a disability be reported to law enforcement authorities?***

Nothing in these provisions prohibits us from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities under state and federal law. The School reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of your child are transmitted for consideration by the appropriate authorities to whom it reports the crime. The School reporting a crime may transmit copies of your child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

***What protection does my child have if he or she has not been identified as being a child with a disability?***

A child who has not been determined to be eligible for special education and related services, who has engaged in behavior that violates any rule or code of conduct of the School, may claim any of the disciplinary protections if we had knowledge that your child had a possible disability before the behavior occurred. We are determined to have knowledge if:

1. You, as the parent, expressed your concerns that your child needed special education and related services, in writing (or orally, under certain conditions);
2. Your child's behavior or performance demonstrates the need for such services;
3. You requested an evaluation of your child; or
4. The teacher or other School personnel expressed concern about the behavior or performance of your child to the director of special education or other School personnel in accordance with our established child find or special education referral system.

NOTE # 1: We would not be deemed to have knowledge that your child is a child with a disability if, we either conducted an evaluation, and determined that your child was not a child with a disability; or determined that an evaluation was not necessary; and provided a prior written notice to you of its determination in either of these situations.

NOTE # 2: If we do not have knowledge that your child is a child with a disability (in accordance with the provisions addressed above) prior to taking disciplinary measures against your child, your child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with the following:

- a) If a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
- b) Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- c) If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by us and information provided by you, we shall provide special education and related services in accordance with Federal and State requirements.

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Finally, it is important that you understand all of these rights. Make sure that you ask questions until you understand all of the procedures to which you and your child are entitled.